

St. John's Law Review

Volume 27
Number 2 *Volume 27, May 1953, Number 2*

Article 1

May 2013

Morality and Modern Marriage

Francis J. Connell

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

Connell, Francis J. (1953) "Morality and Modern Marriage," *St. John's Law Review*. Vol. 27 : No. 2 , Article 1.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol27/iss2/1>

This Article is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

St. John's Law Review

VOLUME XXVII

MAY, 1953

NUMBER 2

MORALITY AND MODERN MARRIAGE *

VERY REV. FRANCIS J. CONNELL, C.S.S.R.†

INTRODUCTION

MARRIAGE is a most important institution, on which the welfare of mankind depends in great measure, since it is through marriage that the basic unit of society, the family, is inaugurated, and through marriage that the human race is preserved and propagated. Marriage is the subject of much discussion from the standpoint of anthropology, ethnology and sociology. Today I am considering it from the standpoint of theology—that is, from its moral aspect as proposed by the Catholic Church. And I am concerned with morality in reference to *modern* marriage particularly, not because the principles of morality as made known by human reason and divine revelation are different nowadays from what they have been in past centuries, but because modern times have witnessed a definite and wide-reaching revolt on the part of many from the traditional ideas as to what is commanded and what is forbidden, what is right and what is wrong, in connection with marriage. For practical purposes the conflict has narrowed down to the teachings of the Catholic Church on one hand and the great majority of non-Catholic groups on the other. The breach between these two

* Address delivered at St. John's University, Brooklyn, New York, January 11, 1953.

† Dean of School of Sacred Theology, Catholic University of America.

seems to be widening more and more with the passing of the years. For example, nowadays you can read in a book purporting to be scholarly that premarital sexual experience may be helpful toward proper adjustment in married life.¹ Beyond doubt, there are many nowadays who visualize such experience as something entirely devoid of any moral implications, the choice of which is left entirely to one's own personal inclinations. Quite naturally such an amoral attitude easily leads to an immoral attitude.

In view of this pronounced disagreement between the teachings of the Catholic Church and the world of our times on the moral aspects of marriage, it is vitally important that all Catholics be familiar with the doctrines and the laws of their Church pertinent to this subject. The Church herself devotes 165 canons of her Code of Canon Law to legislative enactments on marriage and marriage processes,² and while some of these canons concern technical points that would not be of much practical interest to the laity, most of them refer to matters with which every Catholic should have some familiarity. Some of the Church's laws are only restatements of divine law; others are the Church's own prescriptions.

We shall consider the moral problems relating to marriage and the Church's teaching and legislation concerning them under two general headings, representing the two phases of marriage characteristic of Catholic doctrine especially opposed to the modern secular trend—marriage as a social institution and marriage as a sacred institution.

I. MARRIAGE AS A SOCIAL INSTITUTION

The most fundamental principle regarding the conjugal union as intended by nature—which means, as intended by God, the Author of nature—is that marriage is a social institution. This means that the primary purpose of marriage is the welfare of society. Catholic theology and the legislation of the Church express this principle in the brief state-

¹ See FROMME, *THE PSYCHOLOGIST LOOKS AT SEX AND MARRIAGE* 80 (1950).

² CODEX JURIS CANONICI, Canons 1012-1143, 1960-1992.

ment: "The primary end of matrimony is the procreation and the rearing of children."³ Our own reason leads to this conclusion. For the chief factor of marriage is the mutual transfer by a man and a woman of the right to sexual intercourse. Now the very physiology of sexual intercourse shows that its principal purpose is the production of new life; and natural instinct inherent in all living creatures dictates that those who bring offspring into the world must care for them until they are able to care for themselves. This procreation and rearing of children promotes the welfare of human society, ever replenishing the life of mankind down through the centuries. And, in order to impress on men this primary purpose of marriage, the Almighty said to the first married couple as He blessed them in the Garden of Paradise: "Increase and multiply and fill the earth."⁴

This principle of the predominance of the social aspect of marriage must be strongly emphasized today because the tendency of the times is to stress the personal advantages coming from conjugal life rather than the social benefits of matrimony. "What am I to get out of marriage?" is the only question that some moderns seem to ask themselves when they are planning to enter the married state. They have little or no concern for the good of society which they can so effectively further in marriage, and to which this unique union of man and woman is primarily directed by the Creator. This unfortunate attitude toward matrimony has many deplorable repercussions in modern domestic life in the form of the neglect or the rejection of some of the most important duties and responsibilities of the conjugal state.

It is interesting to note that a few years ago this personalistic attitude toward marriage was championed to some degree by a group of Catholic scholars, who believed that the traditional doctrine on the purpose of marriage should be modified. Although they were not in full agreement among themselves and in some instances were not quite clear in proposing their views, their general theme was that the perfecting of the personality of each of the parties by the complete

³ Canon 1013, § 1.

⁴ *Genesis*, 1:28.

giving of self to the other—the attainment of a two-in-onenesship, as they called it—is the primary purpose of marriage, superior in its significance and immediacy to the procreation and rearing of offspring, or at least of equal importance. As Dr. Herbert Doms, one of the prominent defenders of this view asserted: “The immediate purpose of marriage is the realization of its meaning, the marital two-in-onenesship.”⁵ For almost ten years this view was upheld by some Catholic writers. However, the Church is ever vigilant to protect the orthodoxy of doctrine, and on April 1, 1944, the Sacred Congregation of the Holy Office issued a decree which in part was as follows:

In the last few years a number of published writings concerning the ends of marriage and their relation and order have appeared, which assert either that the primary end of marriage is not the generation of children, or that the secondary ends are not subordinate to, but are independent of the primary end. In these discussions the primary end of marriage is variously designated. For example, it is said that it consists in the complement and personal perfection of the spouses by a complete communion of life and action; in their mutual love and union, to be advanced and perfected through the psychical and corporal surrender of their persons; and various other things of this sort. . . . This new departure in thought and speech is liable to occasion errors and uncertainties; and in order to avert such consequences the Eminent and Most Reverend Fathers of this Supreme Sacred Congregation, which is in charge of safeguarding matters of faith and morals, in the plenary session of Wednesday the 29th of March, 1944, considered the question proposed to it as follows: *Question*. Whether the opinion of certain modern writers can be admitted, who either deny that the primary end of marriage is the generation and rearing of children, or teach that the secondary ends are not essentially subordinate to the primary end, but are equally principal and independent? *Reply*. In the negative. . . . This decree was approved by Pope Pius XII.⁶

The importance of this principle concerning the primary purpose of marriage is evident from the conclusions which follow from it in contradistinction to the standards accepted by the modern world. The most patent example of such a

⁵ DOMS, *THE MEANING OF MARRIAGE* 94 (1939).

⁶ *Acta Apostolicae Sedis*, 36, 103 (1944).

conclusion is concerned with contraception—"birth control" as it is generally called. To most persons outside the Catholic Church today it seems perfectly lawful for a married couple to use their married rights in such a manner that the power of the sexual act to produce new life is positively frustrated. Sometimes those who resort to such a device attempt to defend their manner of acting on the ground that it can be compared to the use of such artificial contrivances as eyeglasses and hearing aids—apparently oblivious of the evident fact that it is one thing to assist nature in its activities and an entirely different thing to prevent nature from achieving its divinely established objective. The stand of the Catholic Church on this matter is well known. It is an absolute condemnation of all forms of contraception, and will remain the teaching of the Church until the end of time. Pope Pius XI expressed it thus: "Any use whatsoever of matrimony exercised in such a manner that the act is deliberately frustrated in its natural power to generate life is an offense against the law of God and of nature, and those who indulge in such are branded with the guilt of a grave sin."⁷

The basic reason for the sinfulness of contraception is the fact that it is a deliberate and positive frustration of the fundamental element of the primary purpose of marriage, the procreation of offspring. It is the creature's defiance of the Creator's plan. Even a single act of this kind is gravely sinful, because it is a defilement of a most sublime action of husband and wife, whereby they may co-operate with the Most High in the creation of an immortal human soul. There can be no slight matter in misconduct of this kind.

Another very important moral problem connected with the subject of the primary purpose of the conjugal union is divorce, in the sense of a complete breaking of the marital bond with the right to enter another marriage. As all know, divorce has become one of the major features of American life. Although there has been somewhat of a decline in the number of divorces in the United States since the years 1945-1946, there still takes place annually about one divorce to

⁷ Encyclical *Casti Connubii*, translated in FIVE GREAT ENCYCLICALS 93 (1939).

every four marriages.⁸ It is not uncommon for a person to obtain a divorce and to remarry three or four times within a space of a few years—something which should disgust every one who possesses even a rudimentary sense of decency. Yet, there are those who uphold the lawfulness of a divorce with such specious arguments as: "When love ceases, a married couple should be free to separate and to seek love elsewhere When a person makes a mistake in the choice of a life-partner, he should be allowed to rectify the mistake." A recent writer who essays to take a psychological view of marriage says: "Since divorce has come to be a recognized datum of modern life, we ought to replace our emotional reaction to it with a more rational understanding of its meaning and consequences for the people involved."⁹ It should be noted that such arguments are based on the supposition that marriage is primarily intended for the benefit of the individual parties, rather than for the welfare of society. It is to be regretted that practically all the religious groups outside the Catholic Church today have renounced the traditional Christian attitude toward divorce and are giving all the rights of membership in their churches to persons who are divorced and remarried.

But the Catholic Church adheres to the doctrine that the law of God forbids the severance of the marriage bond. The basic reason, again, is that marriage is a social institution. For the welfare of society demands that the couple remain together as husband and wife in order to fulfil that aspect of the primary end designated as the rearing of their offspring. Hence, the natural law itself prohibits the breaking of the conjugal bond. Although natural reason would suffice to establish this point, God has confirmed this conclusion through revelation. Jesus Christ authoritatively asserted: "What God has joined together, let no man put asunder."¹⁰ And St. Paul wrote: "To those who are married, not I, but the Lord commands that a wife is not to depart from her husband, and if she departs that she is to remain unmarried

⁸ FRANCISCAN ALMANAC 671 (1952).

⁹ FROMME, *op. cit. supra* note 1, at 226.

¹⁰ *Matthew*, 19:6.

or be reconciled to her husband. And let not a husband put away his wife.”¹¹

In connection with the Church's stand on divorce, as opposed to the parental duty of properly rearing the children, a difficulty might be proposed: If this is the main reason against the dissolution of the marriage tie, why may not a couple secure a divorce if they have no children? The answer is found in a very wise provision of the Almighty in laying down His laws for mankind. His legislation is based on what is ordinary and normal in human life, not on what is extraordinary and exceptional. It is the ordinary thing for children to be born of a marriage; hence, the law of God requires that the couple remain together in order that they may give their children proper care and training. Accordingly, the divine law of the indissolubility of marriage holds for the childless marriage as well as for that in which children are born—in both cases the common good of society demands that the couple remain united by the bond of matrimony until they are separated by death. It should be noted, too, that there are other reasons besides the primary purpose of marriage that exclude divorce. The firm, trustful love that should exist between husband and wife cannot be fully realized unless they are both certain that they are to remain together, one in body and in soul, until the angel of death severs their union.

Another point in connection with the indissolubility of marriage is this: Since we are here concerned with a law of God, we must bear in mind that the Legislator can give a dispensation. In other words, although the welfare of society demands that marriages in general remain unbroken, God can permit divorce (in the fullest sense) in certain instances for a good reason. From the Old Testament we know that the Almighty did allow the men of the Jewish people in certain cases to give a bill of divorce to their wives.¹² Christ referred to this when He said to the Pharisees: “Moses, by reason of the hardness of your heart, permitted you to put away your wives; but it was not so from the

¹¹ *First Epistle to the Corinthians*, 7:10.

¹² *Deuteronomy*, 24:1.

beginning."¹³ Later, we shall see that there are some exceptions also in the New Testament. The explanation is that the Almighty, who can envision all human affairs in a single glance, can arrange through the wisdom and power of His providence that certain well-defined exceptions to the general rule will tend to a higher good than the natural good of human society. In the exceptions granted under the law of Christ through His Church the greater good is the supernatural benefit of the persons to whom the concession is granted. But it should be emphasized that only God and no human authority—not even the Church by its purely ecclesiastical jurisdiction—can grant exceptions to the general rule established by the natural law.

In addition to indissolubility, marriage possesses another essential property by natural law—unity. This means that marriage is intended by God to be a union between one man and one woman, to the exclusion of polygamy. It must be admitted that the relation of this property of marriage to the common good is not so evident as is the relation of indissolubility, at least as regards polygyny, the marital union of one man with several women simultaneously. Such a polygamous union would not be directly contrary to the procreation and the rearing of children. Indeed, some Catholic theologians have held that the natural law does not forbid polygyny, though they all admit that polyandry, the conjugal union of one woman with several men, is contrary to the natural law.¹⁴ However, the majority of Catholic theologians believe that both types of polygamy are opposed to the natural law, inasmuch as it is at least indirectly harmful to the common good for the love of a married person to be divided among several partners. Moreover, it is very difficult for a man to give his children the proper care demanded by the natural law, if it is dispersed among the progeny of several wives.

In any event, the restriction of human beings to monogamous unions was contained in the divine-positive law im-

¹³ *Matthew*, 19:8.

¹⁴ See MERKELBACH, O. P., *SUMMA THEOLOGIAE MORALIS* III, n. 810 (1939).

posed on mankind from the beginning of the human race by the divinely inspired dictum: "They shall be two in one flesh."¹⁵ In pre-Christian times God granted certain exceptions from this law of unity also, as is evident from the fact that even the holy patriarchs had more than one wife.¹⁶ But since the promulgation of the law of Christ no exceptions to this essential property of the unity of matrimony have been granted by God. Moreover, the laws of all civilized countries forbid polygamy, although after each of the World Wars some have recommended it in lands where the male population was greatly reduced in battle.

The primary purpose of marriage includes not only the procreation of children but also the proper rearing of those whom a couple have brought into the world. This is a dictate of natural reason, substantiated by the instinct of all living creatures. The task of rearing their offspring imposed on husband and wife includes provision for the physical, intellectual and spiritual welfare of their children. This is the onerous duty which God's law prescribes for those who have received the privilege of parenthood. It demands years of toil and watchful supervision; it is the phase of married life which provides the best test of the virtue of husband and wife. The Catholic interpretation of this aspect of the primary purpose of marriage does not favor the tendency on the part of some governments to assume almost the entire responsibility for the rearing of the children of the nation. Governmental assistance may be sought when necessary, as in the case of public schools; but it must always be remembered that the first right and duty to educate children belongs to the parents. What this obligation includes in the present supernatural order will be considered later.

Although marriage has for its primary purpose the procreation and the rearing of children, it has also secondary purposes of great value. The Code of Canon Law designates as the secondary end of matrimony "mutual help and the remedy of concupiscence."¹⁷ This means that the Creator

¹⁵ *Genesis*, 2:24.

¹⁶ Cf. MERKELBACH, *op. cit. supra* note 14, at III, n. 812.

¹⁷ Canon 1013, § 1.

intended the conjugal state, not only to preserve and propagate the human race, but also to provide a means whereby men and women would assist one another constantly and lovingly in the necessities and trials of life and could lawfully satisfy and appease the strong inclination to sexual gratification. It would not be wrong for a person to enter marriage through the desire of these objectives rather than through a motive of promoting the good of society, as long as he does not exclude the primary purpose of the union. Since, however, the procreation of offspring pertains to the primary end of marriage, a person could not marry validly if he were physically incapable permanently of performing the act of sexual intercourse. It should be noted that this is not the same as sterility, the lack of the physical power to generate children, which does not of itself exclude one from contracting a valid marriage.¹⁸

Because marriage is a social institution, directed primarily to the good of society, the contract of marriage by its very nature is subject to the jurisdiction of public authority, even as regards what is requisite for the validity of the contract. In other words, public authority, for the sake of the common good, can specify the conditions requisite for a true marriage between persons subject to its jurisdiction and can determine circumstances in which a couple cannot contract a real marriage. If the human race were in a purely natural order, the competent authority for such legislation would be the civil government for all its citizens. However, as we shall see later, in the present order the Church possesses this authority with respect to all those who come under her jurisdiction through the reception of Baptism.

Since marriage brings with it weighty responsibilities and duties, only those who voluntarily make the marital contract enter a valid marriage. This demands both the physical power to perform the act of sexual intercourse and at least a general understanding of the duties and the privileges of married life. Moreover, no one should be unduly forced into marriage. The right to elect the married state instead of the single state, and the right to marry a person of one's own

¹⁸ Canon 1068, § 3.

choice (apart from a very good reason) are included among the fundamental personal rights of every human being. If a person were forced into marriage by threats or violence to such an extent that he was rendered incapable of making a rational decision, the marriage would be null and void by the natural law. Whether or not fear or violence would invalidate marriage by natural law if it did not disturb one's faculties to this extent is a disputed point.¹⁹ As far as the subjects of the Church's jurisdiction are concerned the problem is settled by ecclesiastical law which stipulates that a marriage is invalid if it is entered into through grave force or fear unjustly inflicted from without, in such wise that a person is obliged to choose marriage in order to free himself from the force or fear.²⁰

Since the chief factor in the marriage contract is the mutual transfer of the conjugal rights, an error or misunderstanding in regard to other features does not invalidate the contract except in the unusual instance of mistaken identity, or the even more unusual case of one who is a slave and contracts matrimony with one who thinks this person to be free.²¹ Thus, if a girl believes the individual she is marrying is a rich nobleman and he is actually a poor private citizen, the marriage is not thereby invalidated. The same is true in the case of a marriage contracted by a person suffering from a dangerous disease, which he does not reveal to the other party; although he would be committing a grave sin in not manifesting his condition. In other words, whatever may be the modern attitude on this matter, the Catholic Church accepts literally the pledge of the couple on their wedding day that they are taking each other "for better or worse, for richer or poorer."

Such are the principal moral teachings of the Catholic Church centred about marriage as a social institution. It is very evident that they differ in many respects from the ideas that predominate in the world of today. But any honest and intelligent person who recognizes the conjugal union

¹⁹ Cf. DE SMET, *DE SPONSALIBUS ET MATRIMONIO* n. 535 (1927).

²⁰ Canon 1087, § 1.

²¹ Canon 1083.

of man and wife as a divinely established state ordained primarily to the welfare of society must admit that the Church's ethical doctrines on this subject are most harmonious and logical.

II. MARRIAGE AS A SACRED INSTITUTION

We now come to the second general principle on which the Catholic Church bases its moral teachings on marriage—the principle that marriage is a sacred institution. This principle is quite intimately connected with the first principle which we have just considered. For, once we admit that the primary purpose of marriage is the procreation and the rearing of children for the benefit of society and ultimately for the peopling of the kingdom of heaven, it becomes very evident that conjugal life has an inherent sacredness, even prior to any special indication on the part of God. To collaborate with the Almighty in the sublime work of the creation of an immortal human soul and to direct the minds and hearts of children so that they may practice virtue and ultimately attain to the ineffable happiness to which they are destined in the life to come—surely, this is a sacred task, a holy mission which should inspire all married couples with a deep appreciation of the exalted dignity and sanctity of their state. From this we can see why marriage is sometimes referred to as a vocation.

However, in order to give greater assurance to mankind of the holiness of the conjugal union, God determined at the beginning of human history to bestow on marriage a special blessing. The first chapter in the Bible relates that He blessed Adam and Eve when He bade them to increase and multiply,²² and this divine benediction sanctified marriage even as a natural institution down through the centuries, so that those who looked on their marital life in a spiritual light received from the Most High an abundant outpouring of graces to aid them in the fulfilment of their obligations as man and wife, father and mother.

²² *Genesis*, 1:28.

With the establishment of the New Law, the Christian Dispensation, an even greater holiness was bestowed on marriage. Jesus Christ, the Son of God, constituted Christian marriage as one of the seven sacraments of His Church. This truth is not clearly stated in the Bible, though there is a passage in the Epistle of St. Paul to the Ephesians in which it is implied.²³ The Apostle compares the union between Christian husband and wife with the union between Christ and His Church. Now, the union between Christ and His Church is a supernatural union, productive of divine grace; hence, the conclusion seems to follow that the Christian marital union is also something supernatural, capable of conferring grace on the married couple—in other words, a sacrament. However, the main argument for the sacramental dignity of Christian marriage is the tradition of the Church extending back to the very beginning of the Christian era, which presented marriage between Christians as something very holy, productive of grace in the same manner as are Baptism and Holy Orders. And since for Catholics divine tradition, the unwritten word of God, has the same value as the Bible, the written word of God, Catholics accept as a truth of divine revelation the doctrine that Christian matrimony is a sacrament.

This applies only to Christian marriage, the marriage of baptized persons, since one cannot receive any other sacrament validly unless he has first received Baptism. Hence, the marriage of two unbaptized persons, and also (according to the most common opinion) the marriage of a baptized person with one who is not baptized, is not a sacrament, though it becomes a sacrament subsequently when both have become baptized. On the other hand, every valid marriage of two baptized persons is a sacrament for both, since it is the very contract of marriage between baptized persons that Christ elevated to the dignity of a sacrament.²⁴

It is hardly necessary to state that outside the Catholic Church today the sacred status of marriage receives very little recognition. To many Americans marriage is nothing

²³ *Epistle to the Ephesians*, 5:22-32.

²⁴ Canon 1012, § 1.

more than a natural contract, possessing no more holiness than a contract of buying and selling material goods. The innumerable "gags" and "wisecracks" about the married state with which modern novels and motion pictures abound tend to foster this secularistic attitude toward an institution which God willed to be so holy. In general, Protestants reject the doctrine that marriage is a sacrament, though many profess it to be a sacred institution. Oftentimes, however, in church weddings the social and sentimental features are stressed more than the religious aspect.

From the doctrine that Christian marriage is a sacrament it follows that special graces are conferred on the Christian married couple for the fulfilment of their duties as husband and wife. Strictly speaking, the sacrament of Matrimony is the contract, made at the nuptials, and taking only a few moments. However, the bond which remains as a result of this contract possesses a sacramental efficacy, by virtue of which graces are continually bestowed on the couple down through the years of their wedded life. Hence, to understand aright Christian marriage we must conceive the marital tie, not merely as a bond of love uniting the two parties, but also as a bond between the couple and God, through which His love is ever operative. The marriage bond is an unfailing source of divine helps, poured directly into the lives of the two who have received the holy sacrament of Matrimony and indirectly into the lives of their children.

Since the contract and the sacrament are identical in the case of the marriage of two baptized persons, it follows that the same two who make the contract also administer the sacrament. In other words, the sacrament of Matrimony is conferred, not by the officiating clergyman, but by the bride and groom, each bestowing the sacrament on the other. Consequently, when two baptized non-Catholics are married in the presence of their clergyman or a civil official, they give and receive the sacrament of Matrimony (provided there is no impediment to their marriage) just as truly as two Catholics in the presence of their priest.

The Church has legislated that when a Catholic is married, either to another Catholic or to a non-Catholic, the ceremony must take place before an authorized priest and at

least two witnesses.²⁵ This is required for the validity of the marriage. However, the priest officiates, not as the minister of the sacrament, but as the Church's deputy to witness the marriage and to bestow her blessing on the couple. The sacredness of marriage is, of course, the basic reason for the presence of the priest. "References to the part taken by the priest or bishop in the solemnization of Matrimony occur from the second century onward."²⁶ However, the presence of the priest was not always demanded, as it is nowadays, for the validity of the marriage. Even according to the present legislation of the Church there are two cases in which Catholics can validly contract marriage without the presence of a priest—first, when there is danger of death to one or both and an authorized priest cannot be had; second, when it is prudently foreseen that an authorized priest cannot (without grave inconvenience, at least) be procured within a month. In either of these instances the Catholic couple may marry validly and lawfully with only two witnesses present.²⁷

Another conclusion following from the sacramental nature of Christian marriage is the principle that the Catholic Church possesses complete and exclusive jurisdiction over the marriages of baptized persons, extending to the right to lay down conditions or impediments for the validity of such unions and passing judgment on their validity in case of doubt. For the marriage of two baptized persons is a sacrament, and as such it comes entirely under the authority of the Church, like the sacraments of Baptism and the Holy Eucharist.²⁸ Even when the marriage takes place between a baptized person and an unbaptized person the Church most probably enjoys full jurisdiction, because of the higher state of the baptized party. In the case of all marriages under the authority of the Church the civil rulers possess jurisdiction over the civil effects only, such as the determination of the rules of inheritance and of the requirements for the registration of the marriages in the civil records. However, in the

²⁵ Canon 1094.

²⁶ JOYCE, S. J., *CHRISTIAN MARRIAGE* 10 (1933).

²⁷ Canon 1098.

²⁸ Canons 1016, 1038, 1960.

case of the marriage of two unbaptized persons the state, not the Church, possesses legislative authority, including the right to establish impediments.

The marriage impediments established by the Church are fully reasonable, and are based on centuries of the Church's experience with human beings. They are well adapted to promote the temporal and eternal happiness of individuals desirous to enter marriage and to further the common good. Some of the Church's impediments forbid marriage under penalty of nullity, such as blood relationship, lack of suitable age and a solemn religious vow of chastity or major orders; and these are called diriment impediments. Others merely forbid the marriage without rendering it null and void, such as a simple or private vow of chastity; and these are called impeding impediments.

The marriage impediments which are the object of most unfavorable comment are those forbidding mixed marriages—the marriages of Catholics with non-Catholics. Yet, the Church's opposition to such marriages is solidly grounded on psychology and experience, and is supported by many non-Catholic clergymen. In a pamphlet entitled *If I Marry a Roman Catholic*, issued by the Federal Council of the Churches of Christ in America, Protestants are urged not to marry Catholics in view of the conditions which they must accept and which the Catholic Church must necessarily impose. If both Catholics and Protestants listened to their respective church leaders, the problem of mixed marriages would be non-existent. As this pamphlet points out, the proportion of broken homes is much greater among mixed marriage couples than among couples of the same religious belief—fifteen per cent as compared to six per cent.²⁹ In a symposium entitled *Modern Marriage*, Grace E. Chaffee makes the statement:

Mixed marriages are apt to be unhappy, whether the union be between a Catholic and a Protestant or a Jew and a Gentile. There are difficulties in respect to the marriage ceremony, the training of the children and the suggestions and interference of the "in-laws." Even if neither person was particularly loyal to his religion before

²⁹ FEDERAL COUNCIL OF THE CHURCHES OF CHRIST IN AMERICA, *IF I MARRY A ROMAN CATHOLIC* 4 (1946).

marriage, after marriage the sense of difference acts as a focus for all other irritations which arise and soon becomes a major issue in the family.³⁰

As I stated previously, the Catholic Church holds that in certain instances the bond of a valid marriage can be broken. This is done by the authority of God, proclaimed and applied through the instrumentality of the Church. The cases in which God has authorized this dissolution of the conjugal bond are such that supernatural benefit is conferred on one or both parties in sufficient measure to compensate for any detriment that may accrue to the natural welfare of society, which is the primary end of the married state by natural law. The cases in which a complete severance of the bond can take place come under this threefold classification: (1) The Pauline privilege. This means that a marriage contracted by two unbaptized persons can be broken if subsequently one of them becomes a Catholic, and the other refuses to be converted and even will not live any longer with the convert or at least will not live peacefully and without detriment to the convert's spiritual welfare. (2) A marriage between two baptized persons can be dissolved when it has been clearly proved that it was never consummated. The breaking of the bond is effected either by a dispensation of the Pope or by the fact that one of the parties makes solemn profession in a religious order. (3) The marriage of a baptized person with one who was never baptized can also be dissolved by the divinely granted authority of the Church.³¹

Sometimes the Church grants a married couple the right to separate without any breaking of the marriage tie; and although this is sometimes spoken of as a divorce in ecclesiastical terminology, it is very evident that it is not a divorce in the present-day sense. Neither must a divorce be confounded with a declaration of nullity, which the Church sometimes grants a couple, and which simply means that the ecclesiastical authorities have investigated the case and have found that because of the existence of an impediment there was no real marriage between the two from the beginning.

³⁰ MODERN MARRIAGE 30 (Jung ed. 1940).

³¹ Canons 1118-1127.

The fulfilment of that aspect of the primary end of marriage designated as the rearing of children means much to Catholic parents, conscious that they possess the one true faith. It means that they must train their boys and girls toward the attainment of a sublime supernatural goal, the eternal possession of God through the beatific vision. Because this is so vitally important, Catholic parents believe it their duty to provide their children with an education that includes instruction and inspiration in the Catholic religion—not as an accessory or accidental element of their course in the natural branches, but as an essential part of their curriculum of studies. This is the reason why Catholics build and maintain separate schools for their children. In recent years this phase of Catholic life has been vehemently assailed by a considerable number of our fellow citizens in the United States, the main charge being that such schools are divisive—likely to harm the civic unity that should prevail among our people. This is the same argument that has been used by totalitarian governments to justify them in suppressing all forms of private education and putting all children under governmental control in public schools. Fortunately in our country the Supreme Court decided on June 1, 1925, in the famous *Oregon School Case*, that parents have a right to have their children educated in schools of their own choice.

The attitude of the Catholic Church toward Christian marriage is, of course, unacceptable to the modern world. Many of our American fellow citizens outside the Catholic fold regard the Church's claim to jurisdiction over the marriages of all baptized persons as autocracy and tyranny of the worst type. But the Church is accustomed to receive such treatment from the world and will not be thereby deterred from the fulfilment of the mission assigned to her by the Son of God. Until the end of time the Church will continue to proclaim the sacramental dignity of Christian marriage and will maintain her divinely granted right to legislate for the marriages of all those who are placed under her jurisdiction by the indelible baptismal character they bear on their souls. In the performance of this task the Church is fully aware that she will receive the divine assistance of Him Who promised the apostles and their successors in the government of

His Church: "Behold, I am with you all days, even to the consummation of the world." ³²

CONCLUSION

About twenty years ago, in his magnificent Encyclical on Christian Marriage, Pope Pius XI made this statement:

The sacred partnership of true marriage is constituted both by the will of God and the will of man. From God come the very institution of marriage, the ends for which it was instituted, the laws that govern it, the blessings that flow from it; while man, through generous surrender of his person made to another for the whole span of life becomes, with the help and co-operation of God, the author of each particular marriage, with the duties and blessings annexed thereto from divine institution.³³

These words present in a concise form the chief teachings of the Catholic Church concerning marriage. Modern moral tenets differ greatly from the principles enunciated in this statement of the Vicar of Christ, and the result is serious harm to many married couples in our land and grave detriment to the home life of our nation. It must be admitted regretfully that there are not a few Catholics whose conduct lamentably fails to measure up to the ideals of the conjugal life proposed by their Church. In this same Encyclical Pope Pius XI complains that pernicious errors and depraved morals in relation to marriage have begun to spread even among the faithful and are gradually gaining ground.³⁴ Conditions today are certainly no better, and are probably worse than when the Sovereign Pontiff wrote these words. Hence, there is an urgent need for Catholics to be most observant of the teaching of their Church in regard to the sacrament of Matrimony. Those who live up to the ideals of Christian marriage as expounded by their Church can have the consoling assurance that they are conferring great benefits on human society and that from their conjugal life they are deriving holiness for themselves and for the children whom God has sent them to be trained and guided toward the goal of life eternal.

³² *Matthew*, 28:20.

³³ Encyclical *Casti Connubii*, translated in FIVE GREAT ENCYCLICALS 79 (1939).

³⁴ *Id.* at 77.